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WHO'S MINDING THE CRADLE?—REGULATORY REFORM IN THE CHILD CARE INDUSTRY

COMMENT BY
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I. INTRODUCTION

The public has been shocked in recent years by increased reports of child abuse. In particular, there have been numerous incidents of physical and sexual abuse in day care settings.¹ In Florida, reports of child abuse at an unlicensed Miami day care center during the summer of 1984 pointed out the inadequacy of Florida's child protection laws.² As a direct response to these incidents, the Florida Legislature, during a Special Session in December 1984, adopted House Bill 19-A.³ This legislation created a task force to study child care and child abuse and to make recommendations to the 1985 Florida Legislature.⁴

The Child Care Task Force reported that the major issues relating to day care were the quality, availability, and affordability of day care.⁵ The Task Force found that fifty percent of the mothers with preschool children currently work outside the home and that the percentage may increase to almost seventy percent during the next decade.⁶ Regarding child abuse, the Task Force noted that although most abuse takes place within the home, child abuse does occur in day care facilities.⁷ In addition, the Task Force found that the law provided few ways to prevent convicted child abusers from working in day care centers.⁸

As a result of the studies done by the Task Force and concerned legislators, almost seventy bills dealing with child care and child abuse were introduced during the 1985 Regular Session.⁹ Of the

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1. CHILD CARE TASK FORCE, RECOMMENDATIONS OF CHILD CARE TASK FORCE 1 (Apr. 25, 1985) [hereinafter cited as TASK FORCE REP.].

2. Miami Herald, May 3, 1985, at 9D, col. 3. This Comment describes some of the abuses that occurred at the Country Walk Baby Sitting Service in South Dade County.

3. Ch. 84-551, 1985 Fla. Laws 38.

4. *Id.* at 96. For a list of the Task Force members, see TASK FORCE REP., *supra* note 1, at 2-3.

5. TASK FORCE REP., *supra* note 1, at 5.

6. *Id.*

7. *Id.* at 5-6.

8. *Id.*

9. The following bills concerning child care and child abuse were introduced in the Senate during the 1985 Regular Session: 78, 286, 290, 353, 432, 436, 489, 504, 521, 602, 671, 680, 686, 687, 718, 745, 751, 808, 819, 830, 872, 873, 881, 967, 994, 1008, 1120, 1147, 1178, 1253,

proposed legislation, eight bills survived and became law.¹⁰

This Comment focuses on one of the major child protection measures, Committee Substitute for Senate Bill 489, which was drafted by the Child Care Task Force.¹¹ Among its provisions, the bill as passed establishes mandatory fingerprinting and screening for certain child care workers, institutes additional licensing standards for child care facilities, specifies crimes that disqualify a person from working in child care facilities, and changes the procedures and circumstances by which abuse records are sealed or expunged. In addition, the newly enacted bill encourages construction of new child care facilities by the establishment of a low interest loan program.

II. PREVIOUS LEGISLATIVE ENACTMENTS

A. *Child Abuse Prevention Act*

In 1982, the Florida Legislature made its first significant movement toward preventing child abuse when it passed the Mills

and 1282. FLA. LEGIS., HISTORY OF LEGISLATION, 1985 REGULAR SESSION, SUBJECT INDEX—BILLS INTRODUCED at 10.

In the 1985 Regular Session, the House considered the following bills relating to child care and child abuse: 1, 11, 19, 64, 97, 115, 136, 256, 265, 275, 306, 347, 349, 549, 606, 611, 692, 715, 743, 771, 773, 774, 827, 849, 864, 874, 979, 1035, 1041, 1054, 1057, 1072, 1116, 1119, 1129, 1253, and 1263. *Id.*

10. The following eight bills were enacted:

(1) Ch. 85-53, 1985 Fla. Laws 140 (Fla. CS for CS for SB 290 (1985)), which relates to judicial proceedings involving children. The provisions attempt to reduce the trauma to children involved in abuse cases.

(2) Ch. 85-54, 1985 Fla. Laws 146 (Fla. CS for SB 489 (1985)), which deals with the regulation of child care facilities and child care workers.

(3) Ch. 85-338, 1985 Fla. Laws 1993 (Fla. SB 967 (1985)), which requires the Department of Health and Rehabilitative Services to recommend to the state attorney those individuals who should be prosecuted for child abuse.

(4) Ch. 85-248, 1985 Fla. Laws 1677 (Fla. SB 1147 (1985)), which creates the Child Abuse Prevention Training Act of 1985.

(5) Ch. 85-118, 1985 Fla. Laws 733 (Fla. SB 1178 (1985)), which authorizes implementation of a pilot program for a child care facility for children of state workers.

(6) Ch. 85-28, 1985 Fla. Laws 97 (Fla. HB 136 (1985)), which provides that communications to clergymen are privileged in cases involving child abuse or neglect.

(7) Ch. 85-206, 1985 Fla. Laws 1441 (Fla. HB 549 (1985)), which supplies the legislative intent with respect to children's rights.

(8) Ch. 85-273, 1985 Fla. Laws 1753 (Fla. HB 1054 (1985)), which deals with child pornography and provides penalties for possession of certain items.

In addition to these new laws, the legislature adopted Fla. HCR 827 (1985), 1985 Fla. Laws 2226, which proclaims April as Child Abuse and Neglect Prevention Month.

11. TASK FORCE REP., *supra* note 1, at 8; ch. 85-54, 1985 Fla. Laws 146. See also Fla. HB 715 (1985), the House companion bill to Fla. SB 489 (1985).

Bill.¹² The purpose of the Mills Bill was to develop a comprehensive approach to the prevention of child abuse and neglect.¹³ Although the Mills Bill has "significantly increased abuse prevention activities, the impact of these efforts is not presently known."¹⁴ The Mills Bill¹⁵ provided for mandatory reporting of child abuse or neglect and created a child abuse registry, which maintains a statewide, toll free "hot-line" for the reporting of child abuse incidents.¹⁶ Pursuant to the Mills Bill, the Department of Health and Rehabilitative Services (HRS) was required to conduct child abuse investigations and was authorized to take a child into protective custody under certain circumstances.¹⁷ After an investigation was completed, if the charge were determined to be unfounded, all identifying information in the report was expunged from the record within thirty days.¹⁸ A report classified as a valid complaint was to be expunged from the abuse registry seven years from the date of the last report dealing with the individual who was the sub-

12. Ch. 82-62, 1982 Fla. Laws 151 (current version at FLA. STAT. §§ 415.501-.514 (1983 & Supp. 1984)). The Act is generally referred to as the Mills Bill in recognition of its sponsor, Rep. Jon L. Mills, Dem., Gainesville.

13. FLA. STAT. § 415.501 (1983). See also FLA. STAT. § 827.04 (1983), which further provides penalties for child abusers.

14. See DEP'T OF HEALTH & REHAB. SERV., OFFICE OF EVALUATION & MGT. REVIEW, MILLS BILL STUDY ii (May 1, 1985). The study is an assessment of the Mills Bill funded child abuse prevention activities.

15. FLA. STAT. §§ 415.501-.514 (1983 & Supp. 1984). The amendments to the statute were made by ch. 84-226, 1984 Fla. Laws 989.

16. FLA. STAT. § 415.504 (Supp. 1984) provides, in part:

- (1) Any person, including, but not limited to, any:
 - (a) Physician, osteopath, medical examiner, chiropractor, nurse or hospital personnel engaged in the admission, examination, care, or treatment of persons;
 - (b) Health or mental health professional other than one listed in paragraph (a);
 - (c) Practitioner who relies solely on spiritual means for healing;
 - (d) School teacher or other school official or personnel;
 - (e) Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker; or
 - (f) Law enforcement officer,

who knows, or has reasonable cause to suspect, that a child is an abused or neglected child shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(2)(a) Each report of known or suspected child abuse or neglect pursuant to this section shall be made immediately to the department's abuse registry on the single statewide toll free telephone number or directly to the local office of the department responsible for investigation of reports made pursuant to this section.

Id.

17. FLA. STAT. § 415.506 (1983). For example, protective custody is appropriate when there is imminent danger to the child's life or physical health. *Id.*

18. FLA. STAT. § 415.504(4)(c) (Supp. 1984).

ject of the investigation.¹⁹ The law does not require that the subject of the report be informed of the outcome of the abuse investigation.²⁰ Reports and records in child abuse cases are confidential and access is allowed only as authorized by statute.²¹

The Child Care Task Force thought that the provisions relating to confidentiality and expunction limit the effectiveness of screening programs which attempt to identify child abusers.²² It is estimated that at least five hundred thousand children are in some type of child care program in Florida.²³ Even though the number of reported abuses in child care facilities represents only a small percentage of the total number of reported cases, the *risk* of abuse at child care centers is especially high because there are few mechanisms in place to prevent known child abusers from working in such facilities.²⁴

B. Child Care Facilities

A system of licensure for child care centers has been in existence in Florida since 1974.²⁵ However, Florida's "child care licensing standards, when compared to the standards in other states, are very limited."²⁶ According to a survey, Florida "is among the bottom one-third of states in the area of state standards for child care licensure whether considering staff to child ratio, enforcement, or required staff training."²⁷

1. Florida Law Prior to the December 1984 Special Session

Prior to 1984, the Florida Legislature had established statewide

19. *Id.*

20. *Id.*

21. *Id.* § 415.51 (Supp. 1984). Access is allowed an investigating law enforcement agency, the state attorney of the judicial circuit where the abuse occurred, and a grand jury when it determines that access to such records is necessary. *Id.* §§ 415.502-.514 (1983 & Supp. 1984).

22. TASK FORCE REP., *supra* note 1, at 7.

23. *Id.* at 6.

24. *Id.*

25. Staff of Fla. H.R. Comm. on Health & Rehab. Serv., HB 19-A (1984) Staff Analysis 2 (final Dec. 12, 1984) (on file with committee) [hereinafter cited as Comm. on HRS HB 19-A Staff Analysis].

26. Staff of Fla. S. Comm. on Approp., CS for SB 489 (1985) Staff Analysis 2 (rev. Apr. 24, 1985) (on file with the committee). For a summary of actions taken by state legislatures during 1984, see NATIONAL CONFERENCE OF STATE LEGISLATURES, THE 1984 LEGISLATIVE SUMMARY: CHILDREN AND YOUTH ISSUES (1984). For instance, Indiana allows background checks of volunteers who work with children, and South Carolina requires that child care staff have criminal background checks prior to employment in a day care facility. *Id.* at 14-15.

27. Comm. on HRS HB 19-A Staff Analysis, *supra* note 25, at 2.

minimum standards that were designed to protect children in day care facilities,²⁸ but the requirements were far from comprehensive. Either the Department of Health and Rehabilitative Services (HRS) or a local county agency could license a child care center.²⁹ While minimum standards were required for personnel, only one adult staff member trained in first aid needed to be present at all times.³⁰ The only training required of the child care worker in identifying victims of child abuse consisted of reading an HRS pamphlet.³¹ Although HRS rules required that child care workers and volunteers be at least sixteen years old and that the owner of the facility be at least eighteen years of age,³² Florida Statutes did not "provide any guidance with regard to minimum age of operators or employees of a child care center, with regard to child discipline, or the plan of daily activities."³³ HRS required background checks and screening of child care personnel, but these were only nominal restrictions regarding who could own or be employed in a child care center.³⁴ Finally, the statute did not include a provision that specified what action could be taken against an unlicensed center.³⁵

Historically, Florida's laws and regulations regarding child care and child abuse in day care facilities have been nominal at best. Because children have very little political or economic power, their needs are often ignored. However, during the last few years increased reports of child abuse in Florida's day care centers and in other centers around the country forced this issue to the political forefront.³⁶

28. FLA. STAT. §§ 402.301-.316 (1983 & Supp. 1984).

29. *Id.* § 402.308 (1983).

30. FLA. ADMIN. CODE R. 10 M-12.02(4)(a) (Supp. 1984).

31. *Id.* R. 10M-12.02(4)(b).

32. *Id.* R. 10M-12.02(2) (1984).

33. Staff of Fla. H.R. Comm. on Health and Rehab. Serv., HB 715 (1985) Staff Analysis 3 (rev. Apr. 16, 1985) (on file with committee) [hereinafter cited as Comm. on HRS HB 715 Staff Analysis].

34. FLA. ADMIN. CODE R. 10M-12.02(1) (1984). This rule provides, in part:

No person shall be an operator or owner of, nor be employed in a child care facility who:

(a) Has a criminal record of child neglect or child abuse.

(b) Is habitually an excessive user of alcohol.

(c) Illegally uses narcotics or other impairing drugs.

(d) Exhibits behavior that may be injurious to children. (e) Has been determined to be a risk to children.

35. FLA. STAT. § 402.312 (1983).

36. See Miami Herald, *supra* note 2.

2. *The December 1984 Special Session*

By the time the Florida Legislature met in special session in December 1984, the issue of child abuse had become a public emergency that demanded immediate legislative action. As a short term solution, the legislature passed House Bill 19-A, which amended numerous child care provisions contained in chapter 402, Florida Statutes.³⁷ The legislature recognized that other nonemergency issues existed and planned to resolve them during the 1985 Regular Session.³⁸

In an effort to prevent convicted child abusers from working at child care facilities, minimum personnel requirements were revised to require "good moral character, based upon screening and background checks."³⁹ Provision was made for child care facility operators to voluntarily request HRS to submit the fingerprints of the facility's employees to the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) for criminal record checks.⁴⁰ A penalty section was created making it a third degree felony to operate a child care facility without a license.⁴¹ In addition, local licensing authorities were given authority to impose fines and to deny, suspend, or revoke a license of a center currently licensed in the state.⁴² Methods were established to assist parents in choosing and evaluating child care facilities for their children.⁴³ Each parent was to receive a brochure containing information such as licensing standards, the toll free number of the Florida Abuse Registry, and any other helpful information relating to competent child care.⁴⁴

The most far reaching aspect of the 1984 Act was its provisions for a twelve member Child Care Task Force,⁴⁵ which was co-chaired by Senator Roberta Fox⁴⁶ and Representative Elaine Gordon.⁴⁷ The legislation charged the Task Force with "develop[ing] a considered, comprehensive range of strategies for dealing with child care and child protection issues during the 1985 leg-

37. Ch. 84-551, 1985 Fla. Laws 38 (amending FLA. STAT. ch. 402 (1983)).

38. *Id.* (last "Whereas" clause).

39. *Id.* § 3, 1985 Fla. Laws at 41 (amending FLA. STAT. § 402.305(1) (1983)).

40. *Id.* § 4, 1985 Fla. Laws at 42 (amending FLA. STAT. § 402.3055 (1983)).

41. *Id.* § 16, 1985 Fla. Laws at 49 (amending FLA. STAT. § 402.319 (1983)).

42. *Id.* § 9, 1985 Fla. Laws at 45 (amending FLA. STAT. § 402.310(1)(a) (1983)).

43. *Id.* § 12, 1985 Fla. Laws at 47 (amending FLA. STAT. § 402.3125 (1983)).

44. *Id.*

45. *Id.* § 17, 1985 Fla. Laws at 49.

46. Dem., Miami.

47. Dem., North Miami.

islative session."⁴⁸ The Task Force was to make recommendations for improvements in the child day care system, personnel training requirements, parental involvement, child protection and abuse programs, and to determine the state's role in these areas.⁴⁹

The Task Force conducted hearings and visited a number of day care centers. In general, the site visits revealed overcrowding and an inadequate staff-child ratio.⁵⁰ Children were not properly supervised, and infants often remained in cribs with little or no activity provided during the day.⁵¹ Because of these problems, the Task Force recommended that changes be made in the administrative rules that regulate child care centers.⁵² Additionally, the Task Force suggested statutory changes that included: establishment of mandatory fingerprinting and background screening for child care workers; stricter licensing standards for child care centers; corporate income tax credits for businesses that establish day care centers; procedures for reducing the trauma of judicial proceedings on children in abuse cases; and limitations on the sealing or expunction of certain criminal history records.⁵³

The last major provision of the 1984 Act authorized HRS to spend federal funds on a voluntary training program. Child care employees could receive twenty hours of training in the following areas: (1) day care rules and regulations; (2) health, safety, and nutrition; (3) child abuse and neglect; and (4) child growth and development.⁵⁴ Federal assistance became available after federal hearings on child care and child abuse disclosed that a crisis exists in child care centers.⁵⁵ To alleviate this crisis, the federal government appropriated \$25 million⁵⁶ to supplement state programs⁵⁷ that provide training for child care facility staff and operators, state licensing and enforcement officials, and parents.⁵⁸ The funds, however, have a condition attached to their use. In order to receive its full allotment, a state must have in effect by September 30, 1985

48. Ch. 84-551, § 17, 1985 Fla. Laws 38, 49.

49. *Id.*

50. TASK FORCE REP., *supra* note 1, at 9-11.

51. *Id.* at 10.

52. *Id.* at 9-12.

53. *Id.* at 8-9. Many of the Task Force's recommendations were embodied in Fla. SB 489 (1985).

54. Comm. on HRS HB 715 Staff Analysis, *supra* note 33, at 3.

55. *Id.* at 1.

56. Continuing Resolution for Federal Fiscal Year 1985, Pub. L. No. 98-473, § 401, 98 Stat. 1837, 2195 (1985).

57. *Id.* § 401(b)(2).

58. *Id.* § 401(a)-(b).

provisions "requiring nationwide criminal record checks for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities."⁵⁹ This is mandatory and any state not instituting background checks must repay one-half of the amount it receives.⁶⁰ Having met the mandatory provision, Florida received \$1.1 million from this fund.⁶¹ In addition to complying with the federal requirements, the 1985 Florida Legislature passed Committee Substitute for Senate Bill 489, thereby implementing many of the Task Force's recommendations.

III. THE 1985 LEGISLATION

A. Legislative History

On April 2, 1985, Senate Bill 489 was introduced by Senator Fox.⁶² The bill was referred to the Senate Committee on Health and Rehabilitative Services, which wrote a committee substitute for the bill before unanimously passing the measure out of the committee.⁶³ The committee substitute was referred to the Committee on Appropriations, which made two technical amendments and reported the bill favorably.⁶⁴ The first amendment clarified that it was the failure to comply with the screening requirements in the bill, rather than with local requirements, that would result in the loss of a facility's license. The second amendment stated that public and nonpublic school programs were not subject to these licensure provisions.⁶⁵ Next, the bill was placed on the Senate calendar. On May 2, 1985, Committee Substitute for Senate Bill 489 was placed on the special order calendar, amended further, and passed by a vote of 35-0.⁶⁶

59. *Id.* § 401(c)(2)(A).

60. *Id.* § 401(c)(2)(B).

61. Comm. on HRS HB 715 Staff Analysis, *supra* note 33, at 1.

62. FLA. S. JOUR. 59 (Reg. Sess. Apr. 2, 1985). The bill was the result of the findings of the Child Care Task Force. See also FLA. HB 715 (1985), the House version of the child care bill.

63. FLA. S. JOUR. 100 (Reg. Sess. Apr. 15, 1985) (first reading of committee substitute).

64. *Id.* at 168 (Reg. Sess. Apr. 24, 1985).

65. Staff of FLA. S. Comm. on Approp., CS for SB 489 (1985) Staff Analysis 10 (rev. Apr. 24, 1985) (on file with committee) [hereinafter cited as Comm. on Approp. SB 489 Staff Analysis].

66. FLA. S. JOUR. 214-215 (Reg. Sess. May 2, 1985). See FLA. CS for SB 489 (1985) (First Engrossed).

The Senate adopted several amendments on the floor. Senator Fox sponsored one amendment that included a provision creating a model plan for community intervention and treatment of intra-family sexual abuse.⁶⁷ Another Fox amendment exempted former drug abusers from disqualification as substance abuse counselors provided they can prove rehabilitation and that they have not committed any felonies.⁶⁸ Senator Grizzle⁶⁹ offered an amendment that would have limited to two the number of children two years of age or younger that could be cared for in a family day care home. This amendment failed.⁷⁰

On the House floor, Committee Substitute for Senate Bill 489 was taken up in lieu of Committee Substitute for Committee Substitute for House Bill 715.⁷¹ In considering Committee Substitute for Senate Bill 489, the House adopted an amendment that would have allowed paddling in day care centers if the child's parents and the facility owner agreed that spanking was an appropriate punishment.⁷² This provision would have created two classes of children, however, because federal rules prohibit corporal punishment when the federal government is subsidizing the child's care.⁷³ The amendment was first offered by Representative Hill⁷⁴ but was laid on the table by a vote of 53-50.⁷⁵ Representative Gallagher⁷⁶ moved that the amendment be reconsidered, and the motion was passed by a vote of 53-50.⁷⁷ The paddling amendment was then re-offered.⁷⁸ Amid much debate, and over the objections of House Speaker Pro Tempore Gordon, one of the House's leading child care reform advocates, the amendment was adopted by a vote of 55-52.⁷⁹ On May 20, 1985, Committee Substitute for Senate Bill 489 was read in the House for the third time, passed as amended

67. FLA. S. JOUR. 214 (Reg. Sess. May 2, 1985) (Amendment 3).

68. *Id.* (Amendment 4).

69. Repub., Bellair Bluffs.

70. FLA. S. JOUR. 215 (Reg. Sess. May 2, 1985) (Amendment 7). The other amendments, all of which passed, include a provision to supercede local licensing, *id.* at 214 (Amendment 5); a recommendation for coordinated training, *id.* at 215 (Amendment 6); and a title amendment, *id.* (Amendment 8).

71. FLA. H.R. JOUR. 416 (Reg. Sess. May 17, 1985).

72. *Id.* at 438 (Amendment 1 to Amendment 1).

73. TASK FORCE REP., *supra* note 1, at 15.

74. Repub., Hobe Sound.

75. FLA. H.R. JOUR. 438 (Reg. Sess. May 17, 1985).

76. Repub., Coconut Grove.

77. FLA. H.R. JOUR. 438 (Reg. Sess. May 17, 1985).

78. *Id.*

79. *Id.* at 438-39.

by a vote of 114-1, and sent to the Senate for its concurrence in the House amendments.⁸⁰

In the Senate, the paddling amendment was removed but not without some controversy.⁸¹ Senator Fox moved the amendment that eliminated the paddling provision and restored the bill to its original Senate status.⁸² Senator Fox gave no explanation as to the amendment's purpose, but the members did have copies of the amendment at their desks.⁸³ After adopting the amendment without debate⁸⁴ and unanimously passing the bill, there were cries from some senators that they had been hoodwinked into adopting the amendment. There was a brief but unsuccessful attempt to recall the bill from the House.⁸⁵ On the same day, the House concurred with the Senate amendment and passed Committee Substitute for Senate Bill 489.⁸⁶ On May 31, 1985, the Governor signed the bill,⁸⁷ which became effective July 1, 1985.⁸⁸

B. Legislative Intent

The legislature adopted Committee Substitute for Senate Bill 489 in response to incidents of child abuse that have occurred in Florida's child care facilities.⁸⁹ The legislature recognized the need to take a strong stand on the issue of child abuse to prevent incidents like the one which occurred at an unlicensed Miami day care center.⁹⁰ This legislation is a continuation of the work started during the December 1984 Special Session and as such is consistent with the general purposes of the 1984 Act. These purposes included the establishment and maintenance of statewide minimum

80. *Id.* at 448 (Reg. Sess. May 20, 1985).

81. FLA. S. JOUR. 364 (Reg. Sess. May 22, 1985).

82. *Id.*

83. Fla. S., tape recording of proceedings (May 22, 1985) (on file with Secretary).

84. FLA. S. JOUR. 364 (Reg. Sess. May 22, 1985).

85. Fla. S., tape recording of proceedings (May 22, 1985) (on file with Secretary); *see also* Miami Herald, May 23, 1985, at 1A, col. 5.

86. FLA. H.R. JOUR. 507 (Reg. Sess. May 22, 1985).

87. Ch. 85-54, 1985 Fla. Laws 146, 207.

88. *Id.*

89. TASK FORCE REP., *supra* note 1, at 1.

90. Ch. 85-54, 1985 Fla. Laws 146 contains provisions relating to: personnel who give care to minors or persons with development disabilities; mental health personnel and volunteers; alcoholism treatment personnel; persons who are likely to work with minors being treated for drug abuse; day care or other child care facilities; and personnel of family foster homes, residential child-caring agencies, and child-placing agencies. Although the textual discussion is limited to the provisions relating to child care facilities, the goals and intent for the entire bill are essentially the same.

standards for the care and protection of children in child care facilities as well as ensuring that all owners, operators, and child care personnel are of good moral character.⁹¹

The fact that these general provisions were not changed by Committee Substitute for Senate Bill 489 indicates that the specific provisions in the 1985 Act are to be interpreted in light of the clear legislative intent expressed in the 1984 Act. The intent of the 1984 Act, as expressed by the legislature, was to "protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care."⁹²

The broad coverage of the 1985 Act, likewise, evidences the legislative intent to encourage a safe and healthy atmosphere in child care facilities and to ensure that proper regulatory measures are in place to promote this goal. The Act provides a new floor of competency and safety for child care centers through minimum age and training requirements, broadened licensing procedures that screen for past criminal convictions, new enforcement powers for HRS, minimum standards for child discipline and activities, a loan program for the expansion of existing child care facilities and the establishment of new child care facilities, and an advisory council on child care facilities to advise HRS on matters relating to child day care.⁹³ The overriding intent of the legislation is the protection of Florida's most precious resource, its children. By establishing such an elaborate system of regulation, the Florida Legislature has given notice to child abusers that their past history will not go undetected.

C. The Legislation as Passed

1. General Provisions

The 1985 Act is a massive piece of legislation, which includes changes that affect who may operate, be employed in, and volunteer in programs which serve children in Florida. The Act reaches all aspects of the child care system and stresses the need for safety and reliability in child care.

Mandatory screening, including fingerprinting, is required for all current employees and operators, as well as for certain volunteers and applicants.⁹⁴ The fingerprints are submitted to the FDLE and

91. Ch. 84-551, 1985 Fla. Laws 38 (amending FLA. STAT. § 402.301(2) (1983)).

92. *Id.*

93. Ch. 85-54, 1985 Fla. Laws 146.

94. *Id.* § 2, 1985 Fla. Laws at 150 (amending FLA. STAT. § 110.1127 (1983)).

to the FBI.⁹⁵ In addition, there are provisions for other screening procedures such as employment history and reference checks, as well as and local, state, and federal criminal record checks.⁹⁶ An individual is disqualified from working with children if, as a result of these screening procedures, it is discovered that the person has been "found guilty of, regardless of adjudication, or having entered a plea of nolo contendere or guilty to, any felony prohibited" by the statute.⁹⁷ Examples of disqualifying felonies are murder, manslaughter, assault and battery against a minor, kidnapping, false imprisonment, and child abuse.⁹⁸ The Act also prohibits the destruction of juvenile records relating to any of the disqualifying felonies.⁹⁹ Consequently, record expunction no longer protects juveniles from the in-depth background checks that the statute seeks to effect.

Any person who has been judicially determined to have committed spouse abuse, as defined in section 741.30, Florida Statutes, or to have committed child abuse, as defined in sections 39.01 or 415.503, is disqualified from working with children.¹⁰⁰ A person who has committed misdemeanors relating to child or spouse abuse under those sections may seek an exemption from disqualification by introducing evidence of good character and rehabilitation.¹⁰¹ The decision of the Department may be contested through an administrative hearing as provided by chapter 120, Florida Statutes.¹⁰²

The Act includes a penalty provision which makes it a first-degree misdemeanor to use the records information for purposes other than screening for employment.¹⁰³ Further "[r]efusal on the part of a facility to dismiss a [worker] who has been found to be in noncompliance with standards of this [Act] shall result in automatic denial or revocation of the facility's license in addition to any other remedies pursued by the department."¹⁰⁴

95. *Id.* § 2, 1985 Fla. Laws at 150.

96. *Id.*

97. *Id.*

98. *Id.* (providing a complete list of disqualifying felonies).

99. *Id.* § 40, 1985 Fla. Laws at 205 (amending FLA. STAT. § 959.225 (1983)).

100. *Id.* § 2, 1985 Fla. Laws at 150 (amending FLA. STAT. § 110.1127 (1983)).

101. *Id.*

102. *Id.*

103. *Id.* § 9, 1985 Fla. Laws at 160 (to be codified at FLA. STAT. § 393.0674).

104. *Id.* § 5, 1985 Fla. Laws at 153 (to be codified at FLA. STAT. § 393.0655).

2. Sectional Analysis

Section one of the Act prohibits the destruction of certain juvenile records so that they may be used in the screening of persons working with children.¹⁰⁵ The courts are given the authority to punish anyone who makes unauthorized use of these records.¹⁰⁶

Section two requires fingerprint and background checks of persons working in HRS programs that provide care to children for fifteen hours or more per week.¹⁰⁷

Sections three through nine amend various statutory provisions that relate to developmental services programs. The legislature intended that caretakers of the developmentally disabled be of good moral character. To accomplish this goal, mandatory fingerprint and background screening have been instituted.¹⁰⁸

Sections ten through twelve concern mental health personnel who have direct contact with unmarried patients under the age of eighteen. These personnel must now meet the other screening requirements of the Act.¹⁰⁹

Sections thirteen through seventeen pertain to alcohol resource personnel who work with unmarried clients under the age of eighteen. These persons must now abide by the other provisions of the Act, such as employment history checks, reference checks, and fingerprinting.¹¹⁰

Sections eighteen through twenty-two subject employees of drug abuse treatment facilities to the screening requirements set forth in the Act.¹¹¹ Workers treating minors for drug abuse must submit to background checks and fingerprinting.¹¹²

Sections twenty-three through thirty-four require child care facilities and family day care homes to conform to the Act's screening provisions.¹¹³ The applicant or the child care center must pay

105. *Id.* § 1, 1985 Fla. Laws at 148 (amending FLA. STAT. § 39.12 (1983)).

106. *Id.*

107. *Id.* § 2, 1985 Fla. Laws at 150 (amending FLA. STAT. § 110.1127 (1983)).

108. *Id.* § 5, 1985 Fla. Laws at 153 (to be codified at FLA. STAT. § 393.0655).

109. *Id.* §§ 10-12, 1985 Fla. Laws at 161 (amending FLA. STAT. §§ 394.453, .455, .457 (Supp. 1984)).

110. *Id.* §§ 13-17, 1985 Fla. Laws at 166 (amending FLA. STAT. chs. 396, 397 (1983 & Supp. 1984)).

111. *Id.* § 19, 1985 Fla. Laws at 172 (to be codified at FLA. STAT. 397.0715).

112. *Id.* §§ 18-22, 1985 Fla. Laws at 172 (amending FLA. STAT. ch. 397 (1983)).

113. *Id.* §§ 23-34, 1985 Fla. Laws at 177 (amending FLA. STAT. ch. 402 (1983), as amended by ch. 84-551, 1985 Fla. Laws 38). Slightly different requirements apply to family day care homes and personnel. Operators are required to take only a three hour introductory course in child care. *Id.* § 28, 1985 Fla. Laws at 188 (amending FLA. STAT. § 402.313(4) (1983)).

for the processing of fingerprints and criminal record checks.¹¹⁴ Excluded from the definition of child care facility are "public schools and nonpublic schools and their integral programs; summer camps having children in full-time residence; summer day camps; and Bible Schools normally conducted during vacation periods."¹¹⁵ However, for purposes of screening, personnel in these facilities are covered by the Act.¹¹⁶ Minimum age and mandatory training requirements are established for child care operators and personnel. Personnel must take an approved twenty hour introductory course relating to child care and an additional eight hours of inservice training per year. Child care operators must be at least twenty-one years of age and employees at least sixteen years of age.¹¹⁷ The Act also specifies that standards for child discipline practices be age-appropriate and constructive.¹¹⁸ The Act provides that "[c]hildren shall not be subjected to discipline which is severe, humiliating or frightening; [d]iscipline shall not be associated with food, rest or toileting; and [s]panking or any other form of physical punishment is prohibited."¹¹⁹

The Child Care Facility Trust Fund is created in section thirty-three. The purpose of the Fund is "to develop a loan trust fund to provide support and encouragement in the establishment and expansion of child care facilities."¹²⁰ The legislature recognized that an increasing number of mothers with children under the age of six were working outside the home and that an inadequate number of day care slots were available.¹²¹ By meeting certain requirements, an individual can borrow up to \$100 thousand at five percent annual interest in order to open or expand a child care facility.¹²²

In section thirty-four, the legislature created within HRS an advisory council on child care. The council will review and evaluate departmental rules affecting child care facilities; review and evalu-

114. *Id.* § 25, 1985 Fla. Laws at 182 (amending FLA. STAT. § 402.3055 (1983), as amended by ch. 84-551, 1985 Fla. Laws 38).

115. *Id.* § 23, 1985 Fla. Laws at 177 (amending FLA. STAT. § 402.302 (1983), as amended by ch. 84-551, 1985 Fla. Laws 38).

116. *Id.* § 31, 1985 Fla. Laws at 190 (amending FLA. STAT. § 402.308(1) (1983)), as amended by ch. 84-551, 1985 Fla. Laws 38).

117. *Id.* § 24, 1985 Fla. Laws at 178 (amending FLA. STAT. § 402.305 (1983)), as amended by ch. 84-551, 1985 Fla. Laws 38).

118. *Id.*

119. *Id.* Parents are to be given written notification of the disciplinary practices used by the facility. *Id.*

120. *Id.* § 33, 1985 Fla. Laws at 191 (to be codified at FLA. STAT. § 402.3195).

121. *Id.*

122. *Id.*

ate child care training programs; recommend any needed legislation concerning child day care; and suggest any needed improvements in the administration of licensing.¹²³

Sections thirty-five and thirty-six require family foster homes¹²⁴ and residential child-care agencies to conform with the Act's screening requirements.¹²⁵

Sections thirty-seven and thirty-eight require HRS to notify the accused of the outcome of the Department's investigation, and, if necessary, the parents of the child.¹²⁶ The identifying information in a substantiated report is no longer to be expunged from the Child Abuse Registry.¹²⁷ However, the Act does provide a procedure to amend or expunge an inaccurate case record.¹²⁸ The legislature has also determined that special intervention and treatment is necessary in cases of sexual abuse. Consequently, HRS, in conjunction with other state offices, is to create a model plan for community intervention and treatment of intrafamily sexual abuse.¹²⁹

Section thirty-nine permits access to the confidential reports maintained by the Abuse Registry for screening purposes. Prior to the record search, the person being screened is notified that an inquiry is going to be made.¹³⁰

Section forty prohibits HRS from destroying juvenile records that relate to crimes that, if committed by an adult, would disqualify the person from working with children.¹³¹

Finally, section forty-one requires all child care facilities, including all secular nonpublic schools and all day care camps, to maintain a surety bond, liability insurance policy, or cash fund in the

123. *Id.* § 34, 1985 Fla. Laws at 192.

124. *Id.* § 35, 1985 Fla. Laws at 194 (amending FLA. STAT. § 409.175 (Supp. 1984)).

125. *Id.* § 36, 1985 Fla. Laws at 202 (amending FLA. STAT. § 409.176 (Supp. 1984)).

126. *Id.* § 37, 1985 Fla. Laws at 203 (amending FLA. STAT. § 415.504 (Supp. 1984)).

127. *Id.*

128. The provision states:

(d) At any time subsequent to the completion of the department's investigation, any subject of an indicated report may request the secretary to amend or expunge the case record and all identifying information in the abuse registry or other computer systems or records pertaining to that report on the grounds that the record is inaccurate or is being maintained in a manner inconsistent with ss. 415.501-415.514. If the secretary refuses or does not act within 30 days after receiving such a request, the subject shall have the right to an administrative hearing to contest whether the record of the report should be amended or expunged.

Id. § 37, 1985 Fla. Laws at 203.

129. *Id.* § 38, 1985 Fla. Laws at 204 (to be codified at FLA. STAT. § 415.5095).

130. *Id.* § 39, 1985 Fla. Laws at 204 (amending FLA. STAT. § 415.51 (Supp. 1984)).

131. *Id.* § 40, 1985 Fla. Laws at 205 (amending FLA. STAT. § 959.225 (1983)).

amount of \$100 thousand.¹³² The fund is to be used for the benefit of any person injured as the result of the operation of the facility.¹³³

IV. THE EFFECT OF THE LEGISLATION

The impact of this legislation on child care facilities will be profound. The Act effects virtually all aspects of the child care system, and, as a result, child care facilities should be safer and healthier places for Florida's children. Because of the additional costs involved, some of the smaller facilities may be unable to comply with the stricter standards and may have to close. However, most people will agree that the increased costs of child care that the Act creates are justified even if only one child is saved from abuse. Nevertheless, the major shortcoming of the Act is its lack of sufficient funding for implementation. While the Governor recommended a \$30 million budget for child care programs, the legislature approved only \$14.3 million.¹³⁴

A. *Economic Impact on the Private Sector*

The costs of screening and fingerprinting are to be borne by the applicant or the facility for whom the applicant intends to work.¹³⁵ The cost of processing fingerprints has been estimated at seventeen to twenty-one dollars per person, depending on the amount charged by the local law enforcement agency for taking the fingerprints.¹³⁶ During fiscal year 1985-86, it is estimated that approximately 96,508 people will be screened.¹³⁷ Using a base cost of seventeen dollars, the cost to the employees and programs will be \$1,640,636.¹³⁸ The cost for the second year is estimated at \$2,070,974.¹³⁹ Concern has been expressed that the fingerprinting costs will be passed on to parents in the form of increased child care costs, thereby causing some families to be unable to afford day care.¹⁴⁰ Jeff Farwell, president of the Florida Association of Child

132. *Id.* § 41, 1985 Fla. Laws at 206.

133. *Id.*

134. Miami Herald, June 2, 1985, at 18A, col. 4.

135. Ch. 85-54, § 25, 1985 Fla. Laws 146, 182 (amending FLA. STAT. § 402.3055, as created by ch. 84-551, 1985 Fla. Laws 38).

136. Comm. on Approp. SB 489 Staff Analysis, *supra* note 65, at 8.

137. *Id.*

138. *Id.*

139. *Id.*

140. Comm. on HRS HB 715 Staff Analysis, *supra* note 33, at 7.

Care Management, a group of about 300 owners and operators of private day care centers, has concluded that "[e]ither the private day care business will disappear as we know it, or at the least, only those with money will be able to afford it, . . . and to pay for this additional training and background checks and other expenses, the cost per child is bound to go up."¹⁴¹ However, in counties where screening and fingerprinting requirements are already in effect, this has not occurred.¹⁴²

The cost for the required training programs is basically unknown, but in Pinellas County and other areas that presently require training, the cost has been minimal.¹⁴³ Since training will most likely be provided by vocational schools, community colleges, and high schools, it is expected that fees will be low.¹⁴⁴ Child care center operators also complain that it is difficult to keep child care workers for long periods of time and that mandatory training programs will be cost prohibitive.¹⁴⁵ However, it is possible that a better trained staff will be retained longer.¹⁴⁶

The low cost loan provision will help child care providers. These persons are eligible for a ten year loan of up to \$100 thousand at five percent annual interest for expansion or development of child care centers. This money will help provide much needed additional day care facilities.¹⁴⁷

B. Economic Impact on the Public Sector

The Act's fiscal impact on the state is expected to be approximately \$3,529,633 for fiscal year 1985-86 and \$4,974,427 for fiscal year 1986-87.¹⁴⁸ Three agencies are affected by this legislation: the Department of Health and Rehabilitative Services (HRS), the Florida Department of Law Enforcement (FDLE), and the Department of Administration, Division of Administrative Hearings. HRS and FDLE will require additional positions to process fingerprints.¹⁴⁹ HRS estimates that it will need seventy-nine new positions to collect the fingerprints, check arrest records, and deter-

141. See Florida Times-Union, June 3, 1985, at B1, col. 4.

142. Comm. on HRS HB 715 Staff Analysis, *supra* note 33, at 7.

143. *Id.*

144. Comm. on Approp. SB 489 Staff Analysis, *supra* note 65, at 9.

145. See Florida Times-Union, *supra* note 141.

146. Comm. on HRS HB 715 Staff Analysis, *supra* note 33, at 8.

147. *Id.*

148. Comm. on Approp. SB 489 Staff Analysis, *supra* note 65, at 9.

149. *Id.*

mine whether an individual should be granted an exemption from disqualification from working with children.¹⁵⁰ The combined annual cost to both departments is estimated at \$1,348,608.¹⁵¹

The HRS Abuse Registry will also experience a significant workload increase. It must search the records for the names of those personnel who are being screened.¹⁵² The Act also requires notification regarding the outcome of the abuse investigations as well as notification that an employment search will be conducted.¹⁵³ In addition, many records that previously have been destroyed must now be maintained and thus will create additional storage costs. The cost to the Registry for the first year is estimated by HRS to be \$124,247.¹⁵⁴

"The right to have a hearing is extended to persons who want to contest the accuracy of arrest records and disposition information uncovered through the screening process. [This] right . . . also extend[s] to persons who want to amend or expunge abuse registry records."¹⁵⁵ HRS estimates there will be 1,125 cases in 1985-86 and 1,250 in 1986-87.¹⁵⁶ To handle this caseload, the Division of Administrative Hearings has requested nine new positions and HRS twenty-four.¹⁵⁷ The costs of these additional positions are projected to be \$1,766,839 for year one and \$2,412,108 for year two, but in practice, these costs may be lower.¹⁵⁸

To help offset some of these costs, Florida will receive its full share of federal funds to establish training programs as provided for in the Continuing Resolution.¹⁵⁹ The Resolution requires participating states to have compulsory fingerprint checks for child care workers in place by September 30, 1985.¹⁶⁰ Florida has complied with this requirement and will not have to reimburse the federal government for one-half of the money it received.¹⁶¹

150. *Id.*

151. *Id.*

152. *Id.* at 9-10.

153. *Id.* at 10.

154. *Id.*

155. *Id.* at 9.

156. *Id.*

157. *Id.*

158. *Id.*

159. Continuing Resolution for Federal Fiscal Year 1985, Pub. L. No. 98-473, § 401, 98 Stat. 1837, 2195-97 (1985).

160. *Id.*

161. *Id.*

C. Future Needs

The 1985 Act should accomplish its goal of protecting children in day care facilities from abuse. However, this is only a small part of the child abuse problem. Perhaps the Act's greatest flaw is that it does not address the causes of child abuse. Almost all incidents of child abuse occur in the home, and it has been shown that most child abusers were themselves abused as children.¹⁶² To stop this abuse, it is necessary to develop programs which identify and treat these potentially abusive parents. According to the Governor's Constituency for Children:

It is estimated that 90 percent of those parents who commit child abuse can be successfully treated, and further abusive behavior can be prevented. Florida must respond to parents who ask for help, provide support to young and inexperienced parents, and reach out to isolated parents who need help in caring for their children. [T]here is no statewide systematic effort to target prevention services to at-risk families, such as teen parents, parents of premature or handicapped babies, or families where there is a history of alcohol, drug or spouse abuse.¹⁶³

Only through preventive measures and programs can child abuse be substantially reduced. These programs will result in more costs to the public, but these costs will be a bargain compared to the terrible price society pays for child abuse. The Governor's Constituency for Children recognizes, "identification and follow-up of high risk infants from birth, mutual self-help networks such as Parents Anonymous, [and] long term individual and family counseling" are still needed.¹⁶⁴

V. CONCLUSION

"Florida may be the third largest state in the union by the turn of the century, [but] it risks not being the third in quality of life or abundant opportunity unless its best resource, its children, are the focus of planning efforts."¹⁶⁵ Planning efforts have begun with the passage of Committee Substitute for Senate Bill 489. This legisla-

162. TASK FORCE REP., *supra* note 1, at 5-6; Note, *Unequal And Inadequate Protection Under the Law: State Child Abuse Statutes*, 50 GEO. WASH. L. REV. 243, 248 n.37 (1982).

163. GOV.'S CONSTITUENCY FOR CHILDREN, CHILDREN CAN'T WAIT! 5 (1985).

164. *Id.*

165. Kempel, *The Governor's Constituency for Children: Concerned Adults United in Lobbying Efforts*, 8 NOVA L.J. 383, 386 (1984).

tion enables Florida to move from the bottom third of states regarding regulation of child care facilities to the forefront nationally. Although only a small percentage of all reported abuse cases occur at child care centers, an increasing number of parents are working outside the home leaving their children in the custody of strangers.¹⁶⁶ The new legislation provides much needed protection by assuring that undesirable child care workers are screened from the system. In addition, child care facilities are required to meet stricter licensing requirements.

The 1985 Regular Session focused public awareness on the crisis in Florida's child care facilities. Florida citizens, however, must not let this legislation be the last to deal with child abuse issues. The Act is a good beginning, but most child abuse occurs in the home. This is the issue that must be addressed in future legislative sessions if child abuse is to be eradicated.

166. Comm. on HRS HB 715 Staff Analysis, *supra* note 33, at 1.